



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Dept. of Medical Assistance Services 12 VAC 30
VAC Chapter Number:	Chapter 120
Regulation Title:	Home and Community Based Services for Recipients with Mental Retardation
Action Title:	Reduction of Patient Pay
Date:	09/06/2000

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The Conference Report of the 2000 General Assembly for the Biennium Budget for 2001-2002 added funding to increase the amount of earned income working disabled recipients can keep before sharing in the cost of their care for services under the Title XIX home and community-based services mental retardation waiver. This action permits working disabled recipients to retain more of their earned income. Since the legislative action did not specify how the changes to the waiver were to be applied, the revised regulations will stipulate how the additional funding will be used.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The Title XIX home and community based waiver services are optional services which are offered as alternatives to more expensive institutional placements. Since the first waiver service (Elderly and Disabled) began in the early 1980s, the demand for community care, rather than institutional care, has gradually increased. This gradual movement is also consistent with the de-institutionalization effort undergone by other public agencies, such as public mental institutions. In light of this gradual shift of public policy from institutional to community care, it is consistent that employed mentally retarded recipients who are also receiving waiver services should retain more of their earned or unearned income. Such a policy will reduce these recipients' dependency on government support.

Item 319, #24c of the Conference Report (for the Appropriations Act) of the 2000 General Assembly designates \$269,150 GF for fiscal year 2001 and \$271,350 GF for fiscal year 2002 for changes "to reduce the amount paid by working disabled recipients for services received under the mental retardation home and community-based services waiver program...."

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

The regulatory action will directly affect the welfare of the Medicaid recipients who receive services through the Home and Community Based-Care Services Waiver for Mentally Retarded Individuals. It will allow working disabled recipients to retain more earned income as an incentive to employment and to help to defray the expenses of employment.

The only impact that this regulatory action will have on local departments of social services will be to revise the subsequent DSS procedures for calculating the amount of income that working disabled recipients are allowed to retain before having to participate in their costs of care.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

The Agency will consider all alternatives identified through the public comment process.

Currently, individuals who participate under this waiver are allowed to keep an amount for their maintenance needs, which is currently equal to the SSI payment level for a family of one. In addition, participants who work are currently allowed a maximum income allowance of \$190.

To provide working program participants an incentive to be gainfully employed, the income allowance is being increased. For the recipient who works between 8 and 20 hours per week, the income allowance will be up to 200% of SSI. For the recipient who works 20 hours or more per week, the income allowance will be up to 300% of SSI. In no case will the total of the maintenance and income allowance exceed 300% of the SSI payment limit.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The promulgated regulations will allow the working disabled to retain more earned income before sharing in the cost of their care. The ability to retain more income will help defray the costs associated with being employed and will serve as an incentive to work more hours. The incentive to earn more will reflect a greater sense of self-worth, personal dignity, and confidence, and will help working disabled individuals to better achieve their maximum level of functioning and to be intergrated into society as much as is reasonably possible.